

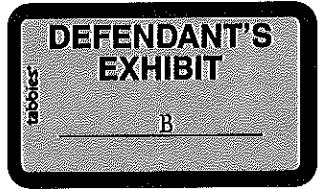
ALVERENE BUTLER

v.

**ALABAMA DEPARTMENT OF TRANSPORTATION, et
al.**

MARK WAITS

January 4, 2007



**Reagan Reporters, LLC
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Fax: 334.262.4437**

MARK WAITS - 1/4/2007

IN THE UNITED STATES DISTRICT CIRCUIT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
ALVERENE BUTLER,
Plaintiff,
vs.
CASE NO. 2:06-CV-278-MEF
ALABAMA DEPARTMENT OF
TRANSPORTATION, et al.,
Defendants.

* * * * *
DEPOSITION
OF
MARK WAITS,
taken pursuant to notice and stipulation on
behalf of the Plaintiff, and the ALABAMA
DEPARTMENT OF TRANSPORTATION, 1409 Coliseum
Boulevard, Room K-101, Montgomery, Alabama
36130-3050, before DAWN A. GOODMAN, Certified
Shorthand Reporter and Notary Public in and for
the State of Alabama at Large, on Thursday,
January 4, 2007, commencing at 12:45 o'clock
p.m.

APPEARANCES

FOR THE PLAINTIFF:

JAY LEWIS, Esquire
847 South McDonough Street
Suite 100
P.O. Box 5059
Montgomery, Alabama 36104

FOR THE DEFENDANTS:

HARRY LYLES, Esquire
Alabama Department of Transportation
1409 Coliseum Boulevard
Room K-101
Montgomery, Alabama 36130-3050

H. MITCHELL ALTON, III, Esquire
Alabama Department of Transportation
1409 Coliseum Boulevard
Room K-101
Montgomery, Alabama 36130-3050

ALSO PRESENT:

Todd Jackson

STIPULATIONS

It is hereby stipulated and agreed by
and between counsel representing the parties
that the Deposition of Mark Waits is taken
pursuant to notice and stipulation on behalf of
the Plaintiff; that all formalities with
respect to procedural requirements are waived;
that said deposition may be taken before
DAWN A. GOODMAN, Certified Shorthand Reporter
and Notary Public in and for the State of
Alabama at Large, without the formality of a
commission; that objections to questions, other
than objections as to the form of the
questions, need not be made at this time, but
may be reserved for a ruling at such time as
the deposition may be offered in evidence or
used for any other purpose as provided for by
the Civil Rules of Procedure for the State of
Alabama.

It is further stipulated and agreed by
and between counsel representing the parties in
this case that the filing of the Deposition of
Mark Waits is hereby waived and that said

deposition may be introduced at the trial of
this case or used in any other manner by either
party hereto provided for by the Statute,
regardless of the waiving of the filing of
same.

It is further stipulated and agreed by
and between the parties hereto and the witness
that the signature of the witness to this
deposition is hereby waived.

* * * * *

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1	I N D E X			
2	Page			
3	Examination by Mr. Lewis	6		
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1	P R O C E E D I N G S			
2	THE COURT REPORTER: Did counsel			
3	want the usual stipulations?			
4	MR. LYLES: Yes, please.			
5	MR. LEWIS: Yes.			
6				
7	(MARK WAITS, of lawful age,			
8	having been duly sworn,			
9	testified as follows:)			
10				
11	EXAMINATION			
12				
13	BY MR. LEWIS:			
14	Q. (By Mr. Lewis) State your name, please.			
15	A. Mark Terence Waits.			
16	Q. Mr. Waits, you have been sitting in here			
17	when we talked to everybody else. I'm			
18	not going to go over the ground rules for			
19	a deposition with you.			
20	What is your position with			
21	ALDOT?			
22	A. I am a Transportation Manager.			
23	Q. And what is a Transportation Manager?			

2 (Pages 5 to 8)

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	9		11
1)	there had been a confrontation between 2 Ms. Butler and Ms. Stacey over alleged 3 comments that Ms. Stacey made?	1 Personnel?	
4 A.	The confrontation I assume you are 5 speaking of is the confrontation that 6 occurred on the job site the day that 7 Todd got called back.	2 A. I talked to Mr. Ed Phillips and Mr. Doug 3 Furlow.	
8 Q.	Yes, April 8th, 2005.	4 Q. What, if anything, did they tell you?	
9 A.	I believe the confrontation occurred on a 10 Monday, and it was possibly the next day, 11 the next working day.	5 A. We sat down and discussed the situation 6 as far as the complaint for the sexual 7 harassment, I mean how the racial 8 harassment allegations went, and the 9 incident combined with the incident that 10 occurred Monday, okay, as to what to do. 11 And we determined that if 12 there was a racial slur, okay, then Rene 13 had the opportunity, if she wanted to, to 14 file a complaint. None had been filed 15 yet. We didn't discourage her from doing 16 that.	
12 Q.	How did you become aware of it?	17 But Mr. Furlow advised that 18 I look into the matter to see if there 19 might have been an alleged racial slur by 20 Karen by asking some of the other 21 employees, which is a normal procedure if 22 there is harassment or violation of that 23 policy.	
13 A.	I believe Todd Jackson had called me and 14 informed me what was going on.		12
15 Q.	Okay. And what did Mr. Jackson tell you 16 about it?	1 Q. I'm a little unclear. You keep talking 2 about the incident on Monday, and I'm 3 assuming that's the April 8th incident in 4 which the confrontation took place.	
17 A.	He needed to speak to me about some 18 issues that occurred actually the week 19 before, and that happened that Monday.	5 A. Yes, I assume it was on April 8th. I'm 6 not sure. I know it was on a Monday 7 morning.	
20 Q.	What other issues had occurred the week 21 before?	8 Q. All right. I want to make sure I'm 9 right. All right. I have on my calendar 10 that April 8th was a Friday for 2005.	
22 A.	When we finally met, he brought to my 23 attention that there was some discussions between himself and Karen Stacey and Alverene Butler about some racial slurs that had been mentioned and plus the occurrence that occurred on that Monday where work got interrupted.	11 A. Okay.	
6 Q.	And what, if anything, did you do about 7 that report to you?	12 Q. And you're saying that the incident that 13 you're talking about took place on a 14 Monday?	
8 A.	First, I gathered the information from 9 Todd as to exactly what happened. Now, 10 I'm talking about the accident, okay -- I 11 mean, the occurrence on Monday, okay, to 12 see what interrupted the work; and then 13 we discussed the issue that had occurred 14 Wednesday or Thursday when he got a 15 report about a racial slur. So I 16 gathered up the information. 17 He was seeking advice on 18 what to do. It was a unique situation as 19 far as our racial harassment policies go, 20 so I sought information from the Division 21 Personnel as far as what steps we 22 probably needed to take from there.	15 A. Right.	
3 Q.	Who did you go talk in the Division	16 Q. All right. And that would be April 11th, 17 quite possibly. Would you have any 18 documents in your possession that would 19 reflect the date that you became aware of 20 the incident or when the incident took 21 place itself?	
		22 A. As far as documents, no. I can't think of any that I would have.	

3 (Pages 9 to 12)

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	13		15
1 Q.	All right. So you decided to talk to	1	interstate most of the day and didn't get
2 some of the employees who were there?	2	2 the opportunity to handle that. Well,	
3 A.	No, that was advised for me to talk to	3	3 upon my discovery and investigation that
4 some of the employees.	4	4 Monday morning, before those crews ever	
5 Q.	Did you talk to any of the employees?	5	5 left the office, Rene had approached some
6 A.	Yes.	6	6 of the other employees there and brought
7 Q.	Who did you talk to?	7	7 the issue up and was quizzing them about
8 A.	The employees that were on that project	8	8 the racial slur and statements she had
9 that were involved in the	9	9 made to them earlier.	
10 cross-sectioning that day on the 11th,	10	10 The general consensus was,	
11 and that's who I talked to, which I think	11	11 from the employees that I talked to, was	
12 you have already got most of their names	12	12 that she did do this. And she brought it	
13 from the previous testimonies.	13	13 to them; they didn't bring it to her.	
14 Q.	Did you talk to Mr. Johnson, or would you	14	14 And they pretty much told her at the time
15 even remember at this point?	15	15 they don't want to talk about this	
16 A.	I believe I did, yes, sir.	16	16 anymore. Leave it alone. They did not
17 Q.	How about Mr. Wynn?	17	17 want to discuss this.
18 A.	I believe I did.	18	18 Well, when they got out to
19 Q.	Okay. And what did Mr. Johnson tell	19	19 the job site -- everyone -- to start
20 you?	20	20 cross-sectioning as directed by Todd, one	
21 A.	Mr. Lewis, I don't recall the exact	21	21 of the ones that she approached that
22 testimony.	22	22 morning, one of the employees, other	
23 Q.	All right. Do you recall what you	23	23 employees, who pretty much said he had
	14		16
1 learned from that, how you finally put	1	1 had enough of it to her that morning	
2 together what had happened?	2	2 brought it to Karen's attention, "Rene's	
3 A.	Yes, sir. Based on the information that	3	3 got something she wants to say to you."
4 I received and trying to determine what	4	4 And that's what stopped the work. That's	
5 happened that delayed the work, okay, I'm	5	5 when the discussion between the two went	
6 talking about the incident. Mr. Jackson	6	6 on and the work got stopped.	
7 was very upset when he came to me and	7	7 And it was in my	
8 because of the stoppage of work. That	8	8 interpretation and investigation and	
9 was his biggest issue: My work got	9	9 opinion that if Rene, at the time, had	
10 stopped because something happened.	10	10 not brought the issue up as instructed on	
11 What I gathered from my	11	11 that Friday, that Monday morning that	
12 initial investigation was that the	12	12 incident would have never happened as it	
13 previous week, the week of the 8th, he	13	13 did, because the employees would not have	
14 was dealing with Karen and Rene's issue	14	14 even thought about this issue. They	
15 about the racial slur, and he had been	15	15 would have gone to work as Todd told them	
16 informed or had instructed Rene that	16	16 to go to work. So based on that, I	
17 Friday, the 8th, that he didn't know how	17	17 concurred with Todd's recommendation to	
18 to handle it just yet. Just keep it to	18	18 do a reprimand for Rene disrupting work.	
19 yourself. Don't talk to nobody. Let me	19	19 That's where the reprimand came from.	
20 get with Mr. Waits on Monday, and I will	20	20 As far as the racial	
21 get back with you.	21	21 harassment slur or the racial slur, there	
22 Well, on Monday morning, I	22	22 again, Mr. Furlow was involved in that at	
23 was tied up in an emergency on the	23	23 that time, too, with recommendations to	

4 (Pages 13 to 16)

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	17		19
1)		1)	
2 find out if there was anything said at		2 Ms. Butler.	
3 the time. Right after that, I believe		3 A. Okay. Let me see if I can clarify. I	
4 that very week, I think Rene actually		4 don't understand your question. Are you	
5 filed a complaint, so we dealt with it in		5 saying prior to that would I have called	
6 the formal manner instead of the informal		6 employees in, co-workers, to question	
7 manner.		7 them about Ms. Rene and Ms. Stacey?	
8 Q. I'm still a little confused about time		8 Q. No. About -- specifically about	
9 lines. Let me see if I can nail it down.		9 Ms. Butler.	
10 Your understanding is that		10 A. I can say I have talked to other	
11 the week before this Monday incident, the		11 employees or co-workers about	
12 confrontation -- we'll call it the		12 Ms. Butler.	
13 confrontation, all right, that stopped		13 Q. And what have you talked to them about?	
14 the work, okay? The week before that,		14 A. It was dealing with another supervisor	
15 Mr. Jackson knew about the racial slurs		15 she had previously a couple years	
16 because Ms. Butler had told him about		16 before.	
17 it.		17 Q. Was that a supervisor against whom she	
18 A. Ms. Stacey had told him about it.		18 had made a complaint?	
19 Q. Stacey had told him about it?		19 A. Yes.	
20 A. (Witness nods head.)		20 Q. What was his name?	
21 Q. Okay. All right. And Stacey had told		21 A. Jim Horace.	
22 him, as you understand it, that she had		22 Q. And what was the nature of that	
23 understood that Ms. Butler was going		23 A. She had filed a sexual harassment case or	
)	18		20
1 racist statements?		1 a complaint against Jim Horace.	
2 A. Correct.		2 Q. Okay. And was it as a consequence of her	
3 Q. Okay. All right. And then, if the		3 having filed that complaint against	
4 confrontation took place, it would have		4 Mr. Horace that she was transferred from	
5 been on that -- probably on that Monday,		5 his supervision to Mr. Jackson's	
6 the 11th, which would have followed the		6 supervision?	
7 week in which Mr. Jackson learned of		7 A. No.	
8 this?		8 Q. Why was she transferred from Mr. Horace's	
9 A. Um-hum, that's correct.		9 supervision?	
10 Q. All right. Prior to that confrontation,		10 A. After the complaint on Mr. Horace was	
11 had you spoken with any of Ms. Butler's		11 filed for sexual harassment, our EEO	
12 co-workers about whether she was creating		12 officers did a thorough investigation,	
13 a hostile environment or whether she was		13 and they recommended at that very day	
14 causing trouble?		14 that the complaint was filed to have	
15 A. No.		15 Ms. Butler and others removed from his	
16 Q. You didn't call several of them into your		16 direct supervision. When I say, "they,"	
17 office one at a time to ask them these		17 the Division Engineer at that time.	
18 things prior to the confrontation?		18 Q. And, in fact, he was left without anybody	
19 A. Could you be more specific on the dates?		19 to supervise?	
20 Q. Well, no, I can't. I wish I could. I		20 A. I don't recollect, Jay, if he had anybody	
21 just can't. But it would have been		21 or not. It could be.	
22 sometime prior to the time of this		22 Q. At that time prior to this confrontation,	
23 interaction between Ms. Stacey and		23 and even prior to the automobile accident	

5 (Pages 17 to 20)

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	21		23
1	that sparked all of the controversy, did	1	Q. You've heard me ask Mr. Jackson about
2	you have any conversations with anybody	2	some policies. Let me show you something
3	about whether or not Ms. Butler would be	3	I will identify as a memorandum
4	a potential troublemaker in her	4	purportedly from you. It is not dated,
5	assignment?	5	and I will read you -- yes, it is dated,
6	A. No.	6	August 24th, 2005, to all District Three
7	Q. Okay. Did you ask anybody whether they	7	supervisors. It has to do with, I
8	thought she had a chip on her shoulder?	8	believe, leave policies, approved and
9	A. Specify -- those exact terms? No.	9	disapproved leave. You take a minute and
10	Q. Or any terms implying the same thing,	10	glance over that.
11	that Ms. Butler was going to be touchy,	11	A. Yes, sir.
12	that she was going to be easily offended,	12	Q. Okay. Now, was I correct it said August
13	that she was going to be hard to get	13	24th, 2005?
14	along with? Anything like that?	14	A. That's what the date on the memorandum
15	A. No.	15	is.
16	Q. Okay. All right. Now tell me what --	16	Q. All right. In it, you're asking your
17	you had indicated earlier you had talked	17	supervisors to go back to specifically
18	to co-workers, slash, employees about her	18	April 8th, 2005, and conduct, what, a
19	transfer or about her previous	19	survey or an audit of the leave that's
20	supervisor. Can you explain?	20	been approved?
21	A. I didn't say that earlier. You may be	21	A. Yes, sir.
22	mis --	22	Q. Okay. What was the purpose of that
23	Q. I may have misheard you. Before the	23	memo?
	22		24
1	confrontation in April, had you had any	1	A. The Department had our -- what is Lamar
2	discussions with anybody, any of Ms.	2	McDavid's title? Our Finance Director
3	Butler's co-workers, about Ms. Butler?	3	put a memorandum out about disapproved
4	A. And I told you earlier I did.	4	leave. And if it's disapproved leave,
5	Q. Okay. And what was that about?	5	then that employee is not entitled to
6	A. It was about the Jim Horace complaint.	6	that leave. They may be on leave without
7	Q. Right.	7	pay.
8	A. During that time of the complaint.	8	Q. Okay.
9	Q. But not after she had been transferred?	9	A. My direct supervisor informed me that we
10	A. Not after she had been transferred.	10	could not put an individual on leave
11	Q. I got it. Now I understand. Now,	11	without pay, contrary to the memorandum
12	following the confrontation, you said you	12	the Finance Director or Bureau Chief put
13	talked to several of the people who had	13	out. He instructed me to allow them
14	been out there at the time.	14	leave, even though it was disapproved.
15	A. Um-hum. Yes, sir.	15	Well, when the auditors came
16	Q. Did any of them -- did you ask any of	16	in and audited our payrolls, okay, around
17	them whether or not Ms. Butler was	17	that date, they found leave slips that
18	creating a hostile environment?	18	had disapproved leave on them, but
19	A. Yes.	19	they were allowed the leave. In other
20	Q. And what did they tell you?	20	words, their time sheets, their payroll
21	A. Some said yes and some said no.	21	sheets showed that they were allowed that
22	Q. Can you recall who said yes?	22	leave, and they said that this is
23	A. No, sir; I can't recall offhand.	23	incorrect; you have to have a

6 (Pages 21 to 24)

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	25		27
1	supplemental payroll sheet made out to correct that.	1	A. Right. Okay. I'll try. I thought I explained it. Maybe I did a poor job of that earlier. It's the Department's policies and procedures that if you disapprove a leave slip that that individual is not entitled to their leave, okay? And if they take off, they're leave without pay.
2	So any previous payrolls that allowed them to use this leave, whether it's sick, annual, or comp time or whatever the case may have been, and it was disapproved, that a supplemental payroll would have to be made out; and that's what this was pertaining to.	2	Q. Right.
3		3	A. My direct supervisors pulled out the same policy and procedures, and it said the only person that had the authority to put an individual on leave without pay is the appointing authority: That would be the Director of Transportation, and he held steady to that. In other words, if Todd was to come to me and ask me for leave and I said no, and he took it anyway, I could not put him on leave without pay. I just wrote "disapproved," and it would be dealt with through his performance appraisal.
4		4	Q. I see.
5		5	
6		6	
7		7	
8		8	
9		9	
10	Q. Okay.	10	
11	A. We finally got the official word and my supervisors above me that any disapproved leave now would be AWOP. So we had to correct all of our leave or payrolls by supplemental payroll.	11	
12		12	
13		13	
14		14	
15		15	
16	Q. So you had to go back from August back through April in order to do that?	16	
17		17	
18	A. They audited us, I think it was, around the 1st of May to that period, and found some, so we had to go back to the first of the year.	18	
19		19	
20		20	
21		21	
22	Q. Did this memorandum go out to all District Three supervisors?	22	
23		23	
)		26	
1	A. Yes.	1	A. Violation. Well, after finding clarification to that issue, and especially when the auditors found leave slips that were disapproved and the leave was allowed, we clarified that and went back to the policy that the Finance Bureau Chief put out that any disapproved leave would be leave without pay. Well, we had to correct the ones that were incorrect.
2	Q. Let me read, I'm just going to read this last paragraph because I don't have a copy for the record.	2	Q. All right.
3		3	A. As a whole set. All the way across the District.
4		4	Q. So if leave had been disapproved, not only was the leave charged against the leave balance of the employee, but the employee was paid for the time leave was taken?
5	"This office is reviewing all previous leave slips from April 8th, 2005, in order to identify disapproved leave for possible payroll corrections. I strongly suggest that you discuss this matter with all of your employees and acknowledge their complete understanding. Should you need any other assistance on this matter, please feel free to contact me."	5	A. Say that one more time.
6		6	MR. LYLES: That's what his view is.
7		7	
8		8	
9		9	
10		10	
11		11	
12		12	
13		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19	A. Um-hum.	19	
20	Q. I don't understand the process by which leave would be disapproved or disallowed and it would still be allowed on the payroll.	20	
21		21	
22		22	
23		23	

7 (Pages 25 to 28)

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	29		31
1	came, if an employee asked for leave and	1	disapproved leave he took in May?
2	you turned it down or the supervisor	2	A. Mr. Lewis, I don't know how the payrolls
3	turned it down, it was -- the only thing	3	and accounts reimbursements are set. I
4	that happened was a notation was made	4	think he has to write them a check, but
5	"disapproved," and it would be taken up	5	I'm not sure. I don't know.
6	as a performance issue?	6	Q. In other words, he would have to pay them
7	A. Right.	7	back for any disallowed leave?
8	Q. But the employee could still take that	8	A. I don't know how they work that. I don't
9	leave and would be paid for it, and it	9	know if they deduct his leave and have to
10	would be charged against his leave	10	write them a check. I just don't know.
11	balance?	11	Q. Okay. Would there be documents
12	A. Right.	12	reflecting when the auditors would have
13	Q. Okay.	13	given instructions to go back to April
14	MR. LYLES: A great system.	14	8th?
15	MR. JACKSON: We all thought it	15	A. I'm sure they probably have a record of
16	was okay, too.	16	when they audit payrolls. I don't know.
17	A. Jay, this memorandum right here that was	17	I really don't know.
18	put out in that last paragraph you just	18	Q. I'm just concerned about why that
19	read was to get all of the supervisors to	19	particular date.
20	discuss it with their employees, because	20	A. Right.
21	I didn't want the precedent set or to	21	Q. Unless that's simply the first date that
22	promote employees into thinking that they	22	was covered by the audit.
23	could take leave. I wanted them to	23	A. I don't know. I can't tell you.
	30		32
1	understand that if they took it that they	1	Q. Let me ask you about a meeting that
2	weren't going to get paid if it was	2	Ms. Butler has told me took place between
3	disapproved, okay?	3	you and her on April 22nd, 2005. And I
4	Q. (By Mr. Lewis) Okay. When you went back	4	know you are not going to remember exact
5	and did the supervisor supplemental	5	dates. But did you have a meeting late
6	payroll that you were talking about, did	6	in April with Ms. Butler?
7	that affect some employees' future pay?	7	A. I don't recall.
8	In other words, let me ask it this way.	8	Q. Okay. Did you have a meeting with her in
9	Let me ask an example. If, for example,	9	which you asked her about her grievances
10	Joe Jones had asked for leave in May of	10	and what her grievances were?
11	2005, eight hours' leave --	11	A. I don't recall. I just don't recall.
12	A. All right.	12	Q. And I'll ask a couple more. Maybe it
13	Q. -- and you said no and you wrote	13	will jog your memory, maybe not.
14	"disapproved."	14	Did you ever ask her in a
15	A. This would be like in April when he	15	meeting whether she was familiar with the
16	asked?	16	procedure for filing complaints about
17	Q. No, let's say -- yeah, he asks in April.	17	racial slurs?
18	He takes it in May.	18	A. I don't recall.
19	A. All right.	19	Q. Okay. What is an estimate?
20	Q. Now, we're into August or September.	20	A. The contractor performs work for us.
21	A. Um-hum.	21	Q. Uh-huh.
22	Q. And this memo is coming out. Would he be	22	A. And we have pay items set up on each
23	docked in a future paycheck for this	23	contract that has a unique value to each

8 (Pages 29 to 32)

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	33		35
1)	unit as work. And as he does the work 2 during the month, we measure or count 3 those items of work, compile all of the 4 quantities up, put a dollar value on it 5 and call it an estimate for a monthly 6 voucher.	1 records out. November of '04 to April of 2 '05, somewhere in there she took it twice 3 and failed it twice.	
7 Q.	All right. Did you have a conversation 8 with Ms. Butler in which you talked to 9 her about estimates, if you recall?	4 Q. Were some employees allowed to take the 5 test in the coordinator's office?	
10 A.	I couldn't recall.	6 A. Not that I am aware of. I physically 7 don't know that.	
11 Q.	Okay. Did you have a discussion with 12 Ms. Butler at any time about her 13 appraisal, annual appraisal, that was to 14 have been given to her sometime in April 15 of 2005?	8 Q. Okay. Was there ever a conversation at 9 which you were present with Stacey about 10 finding some way to get rid of 11 Ms. Butler?	
16 A.	Are you talking about the appraisal she 17 got in April of 2005?	12 A. No.	
18 Q.	Yes. Performance appraisal.	13 Q. Were you ever aware of any situation by 14 which hours were deducted from the pay 15 of Mr. Johnson, Ms. Butler, Mr. Wynn and 16 Ms. Knight as a result of statements made 17 by Stacey?	
19 A.	Mr. Lewis, I could have. I just don't 20 recall. I know I remember talking to her 21 about appraisals in the past, but it 22 could have been dealing back with one 23 previous. I just don't recall that exact	18 A. No, sir.	
)	34		36
1	one.	1 Q. That you can remember about those 2 meetings?	
2 Q.	Do you recall asking her about these 3 racial slurs that Karen Stacey was 4 supposed to have made?	3 A. I have answered your questions pertaining 4 to them, yes, sir.	
5 A.	No, sir. I don't recall asking her.	5 Q. Let me ask you this, then, and that's a 6 good answer. I appreciate that. It 7 makes me work. 8 Do you recall a specific 9 meeting with Mr. Johnson?	
6 Q.	Do you know anything about Ms. Butler's 7 ACI certification?	10 A. Yes, sir. I remember talking to the 11 employees, but I don't remember the 12 specific meetings. I wrote down the 13 information pertaining to Ms. Butler's 14 complaint in the initial investigation. 15 And other than that, I would have to go 16 read them just to refresh my memory on 17 what was discussed.	
8 A.	Yes, sir.	18 Q. Did you maintain those notes?	
9 Q.	Okay. Tell me what you know about that 10 process that she went through.	19 A. I think there are some departmental 20 records as far as -- I don't know how 21 that's kept through EEOC documents. 22 MR. LYLES: If we have got it, 23 we'll turn it over to you.	
11 A.	I know Ms. Butler had taken the ACI 12 previously and had passed. And every so 13 many years you have to go back and take 14 it again, okay, to get recertified. And 15 I don't remember the exact dates, but I 16 know Ms. Butler had failed a portion of 17 it, which there is actually three 18 portions, Mr. Lewis; and if you fail one 19 part, you fail it all, okay? 20 And we re-entered her into 21 another class to take the ACI again, and 22 she failed it again. That was in the 23 year of -- I would have to pull the		

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1	MR. LEWIS: Yeah, I need to do a	1	heard before.
2	request anyway.	2	Q. Did you have -- do you recall any
3	MR. LYLES: Just for the record,	3	specific conversation about whether or
4	the records that Mr. Waits is	4	not Ms. Stacey did make or did not make
5	talking about, I'm going to	5	the statements attributed to her by
6	check on that. If we have	6	Ms. Butler during the accident?
7	such a record, I will turn it	7	A. I'm sorry. Say that again.
8	over to counsel.	8	Q. That was really convoluted. Do you have
9	Q. (By Mr. Lewis) Okay. Going back to	9	any specific recollection of whether you
10	that -- I got distracted when you started	10	discussed with Ms. Stacey whether or not
11	talking about the stuff that you had	11	she made the statements that Ms. Butler
12	written down -- do you recall anything	12	attributed to her?
13	specifically about the meeting you had	13	A. Are you asking me if I asked Ms. Stacey
14	with Mr. Johnson?	14	did she say that?
15	A. No, sir. Not just right offhand.	15	Q. Yes.
16	Q. So you wouldn't know whether he had ever	16	A. I did, and she said she did not say
17	told you that he felt that Ms. Butler was	17	that.
18	being treated unfairly?	18	Q. All right. Fair enough. Other than --
19	A. No, sir.	19	strike that.
20	Q. Okay. How about any meeting with	20	We know that Ms. Butler got
21	Mr. Feagin? Do you remember anything	21	a reprimand because of that
22	about the substance of the conversation	22	confrontation. And we know that the
23	with Mr. Feagin?	23	reprimand was given out to Mr. Jackson, I
	38		40
1	A. No, sir. No, sir. It's been a long time	1	believe.
2	ago.	2	A. Was issued by Mr. Jackson, yes, sir.
3	Q. It has. And I'll ask you the same	3	Q. Okay. Would you have any idea or did you
4	question about Mr. Wynn.	4	discuss with Mr. Jackson why he didn't
5	A. Um-hum.	5	give a reprimand to Ms. Stacey?
6	Q. Same answer?	6	A. We did discuss the reprimand. And
7	A. Yes, sir. I have so many employees in	7	Mr. Jackson felt that Ms. Butler deserved
8	the District and so many -- it's just	8	the reprimand because she did not follow
9	hard for me to give an accurate answer.	9	his instructions from the previous Friday
10	Q. And Ms. Knight?	10	not to discuss this with other employees
11	A. The same with Ms. Knight.	11	until he got back with them. If that had
12	Q. And Mr. Taylor, the same answer?	12	been adhered to, then the confrontation
13	A. Yes, sir.	13	may not have ever happened, and that's
14	Q. And did you talk to Ms. Stacey about the	14	what disrupted the work.
15	confrontation?	15	Q. Okay. All right. I understand. So
16	A. The confrontation on the -- yes, I'm sure	16	it's -- and I may have heard this wrong
17	I did. If I did the initial	17	earlier. So it's your understanding that
18	investigation, that was probably brought	18	Mr. Jackson had had a conversation with
19	into it.	19	Ms. Butler the previous week.
20	Q. Do you remember anything she said?	20	A. Yes, sir.
21	A. Other than what Todd brought up earlier	21	Q. About not discussing it with anybody?
22	today and what I heard Karen say, it just	22	A. Yes, sir.
23	kind of brings back the same things I	23	Q. Okay. And that would have been after Ms.

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1)	Stacey came to Mr. Jackson and complained 2 that Ms. Butler was attributing remarks 3 to her?	1 come in and any comments that her 2 supervisor may make and review her 3 performance through her training records, 4 certifications she should acquire to -- 5 in order to do her job. A lot of that is 6 about all I can actually observe of her 7 work, personally.	
4 A.	To other co-workers, yes.	8 Q. What are the requirements for promotion 9 to a CE, at that time?	
5 Q.	Okay. And the reprimand was given out 6 because Ms. Butler had talked to the 7 other co-workers, not because of the 8 confrontation with Ms. Stacey. That's 9 what Ms. Butler had done wrong?	10 A. The requirements for a CE? The State 11 Personnel Board has that in place for 12 someone to either get promoted or hired 13 into the State, which essentially means 14 meet minimum qualifications, submit an 15 application. If that classification of a 16 job requires examinations, go take an 17 examination.	
10 A.	The reprimand was issued to Ms. Butler 11 because she did not follow Mr. Jackson's 12 orders and, because of the failure, work 13 was disrupted.	18 Once you take an 19 examination, you're placed on a register, 20 and hopefully your name will be ranked 21 high enough on that ranking on that 22 register that when there is a vacancy and 23 they call off of the register, you might	
14 Q.	Even though Ms. Stacey was the one who 15 initiated the conversation?		
16 A.	I don't know that Ms. Stacey initiated 17 it.		
18 Q.	Okay. Do you know whether Ms. Stacey was 19 given any instructions about discussing 20 the matter?		
21 A.	No, I do not recall.		
22 Q.	Okay. Let me go through my notes for a 23 second. I don't need privacy.		
	42		44
1)	MR. LYLES: Probably wanted to 2 talk to yourself out loud? 3 COURT REPORTER: Do you want 4 to read and your sign your 5 deposition? 6 MR. LYLES: You can do that 7 or waive it. She is good. 8 Just waive it.	1 get a notice to go take an interview for 2 it. 3 Q. All right. With CEs under Mr. Jackson, 4 for example, who would be the 5 decision-maker as to who to hire off the 6 register? 7 A. CEs under Mr. Jackson? 8 Q. Yes. 9 MR. LYLES: Vacancy in your 10 District. 11 Q. (By Mr. Lewis) Yes. 12 A. Oh, in my District? I do the interview 13 and selection. There's actually -- the 14 way the department is structured, the 15 interview team through the SPD that we 16 have that sits down and interviews makes 17 the selection off of the register that's 18 forwarded to that team. 19 Q. Are you aware of whether Ms. Butler was 20 on that register? 21 A. No, she was not. 22 Q. She was not? 23 A. She was not on -- none of the registers	
9 A.	Just waive it.		
10 Q.	(By Mr. Lewis) Just two other things and 11 I think we will be through. 12 No. 1, are you personally 13 aware of any complaints about Ms. 14 Butler's work performance or her job 15 knowledge or competence to perform 16 functions of her position?		
17 A.	I don't believe I could answer it in that 18 form of the question. Repeat that.		
19 Q.	Is she a pretty good worker in terms of 20 knowing what she was doing and doing the 21 job?		
22 A.	I don't directly supervise her work. All 23 I can do is look at the evaluations that		

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<p>1 I've ever interviewed for. I can't say 2 if she is on the register as a whole or 3 not.</p> <p>4 Q. And then the last thing I want to go 5 into, and we've touched on this before. 6 This prior complaint she had against 7 Mr. Horace --</p> <p>8 A. Um-hum.</p> <p>9 Q. -- did you ever discuss with either Mr. 10 Jackson or anybody in Mr. Jackson's 11 office Ms. Butler's complaint about 12 Mr. Horace?</p> <p>13 A. I never discussed it with Mr. Jackson. I 14 did discuss it with some of the 15 co-workers of Rene that were assigned to 16 Mr. Jackson, because they were directly 17 involved in the complaint of 18 Mr. Horace.</p> <p>19 Q. Tell me about the conversations you had 20 with them.</p> <p>21 A. It was during the complaint process with 22 Mr. Horace.</p> <p>23 Q. It was not after she had been</p>	<p>45</p> <p>1 CERTIFICATE OF COURT REPORTER. 2 I, DAWN A. GOODMAN, do hereby certify; 3 That I am a Certified Shorthand Reporter 4 of the State of Alabama; 5 That the foregoing pages are a true and 6 correct transcript of the Deposition of Mark 7 Waits; 8 I further certify that I am not interested 9 in the outcome of said matter nor connected 10 with or related to any of the parties of said 11 matter or to their respective counsel. 12 Dated this 10th day of January, 2007, at 13 Prattville, Alabama.</p> <p>14</p> <p>15</p> <hr/> <p>16 DAWN A. GOODMAN, CSR State of Alabama</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
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